

48A C.J.S. Judges § 34

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

II. Selection, Eligibility, and Qualification

B. Eligibility Requirements

1. In General

§ 34. Generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#) , 3, 4, 5

Matters of a judge's eligibility and qualifications are generally such as are prescribed by law.

Matters of a judge's eligibility and qualifications are generally such as are prescribed by law.¹ The qualifications of a federal judge are solely a matter of federal law.² A judge must have such qualifications as are required³ but is not required to have any others.⁴

Generally, neither the legislature⁵ nor the courts⁶ are authorized to change the qualifications of judges prescribed by the constitution. Nor may a legislative referendum add qualifications for judges to those that are constitutionally prescribed.⁷

The legislature may, however, prescribe further and additional qualifications provided they do not abridge or conflict with the constitutional provisions.⁸ The legislature also has the power to fix and determine the essential qualifications for the office where they have not been prescribed by the constitution⁹ or where there is express constitutional authorization for such action.¹⁰ In some jurisdictions, by virtue of court rule, the courts may determine essential qualifications of judges.¹¹

Prior removal from office.

A judge removed by a state's supreme court may be ineligible for judicial office for a specified period¹² or may be prohibited from seeking election to judicial office.¹³

Continuing education requirements.

Some jurisdictions have adopted rules requiring judges to regularly attend specified judicial education conferences.¹⁴

Felony conviction.

An individual is not disqualified from holding judicial office as a convicted, unpardoned felon where the sentence received has been expunged from the records and the indictment upon which the void sentence had been entered has been abandoned.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Judicial candidate who did not belong to political party was injured by provision of Delaware Constitution that limited service on state's supreme court, superior court, and chancery court to members of state's two major political parties, and thus had standing to challenge it, even though he had not applied for any position on those courts since becoming political independent. U.S. Const. art. 3, § 2, cl. 1; Del. Const. art. 4, § 3. *Adams v. Governor of Delaware*, 922 F.3d 166 (3d Cir. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 Ill.—*People ex rel. Sullivan v. Powell*, 35 Ill. 2d 19, 217 N.E.2d 806 (1966).

As to the matter of a judge qualifying for office, generally, see §§ 46 to 49.

As to matters which disqualify a judge from trying a cause, see §§ 245 to 297.

No constitutional guarantee of right or privilege to run for or retain judicial office
Mich.—*Matter of Del Rio*, 400 Mich. 665, 256 N.W.2d 727 (1977).
- 2 U.S.—*U.S. ex rel. Rogers v. Richmond*, 178 F. Supp. 44 (D. Conn. 1958).

Judges required to have certain clearly prescribed attributes
U.S.—*In re Committee of Unsecured Creditors of F S Communications Corp.*, 760 F.2d 1194 (11th Cir. 1985).

Legislative court appointee
Trial judge, who had been appointed to sit on legislative court, was also qualified to act as Justice of United States District Court for the District of Columbia.

U.S.—*Simpson v. U.S.*, 370 U.S. 946, 82 S. Ct. 1596, 8 L. Ed. 2d 813 (1962).
- 3 N.H.—*In re Proposed Rule Relating to Continuing Ed. for Dist. and Municipal Court Judges*, 115 N.H. 547, 345 A.2d 394 (1975).

Judge cannot be commissioned

The governor may not commission a circuit judge-elect if he or she fails to satisfy the constitutional eligibility requirements for that office.

Fla.—*In re Advisory Opinion To Governor re Com'n of Elected Judge*, 17 So. 3d 265 (Fla. 2009).

4 Mont.—*State v. Cocking*, 66 Mont. 169, 213 P. 594, 28 A.L.R. 772 (1923).

Person lacking qualities of good character and repute disqualified from serving as judge

N.Y.—*Knickerbocker Textile Corp. v. Leifer Mfg. Corp.*, 103 N.Y.S.2d 782 (Sup 1951), order rev'd on other grounds, 278 A.D. 351, 105 N.Y.S.2d 200 (1st Dep't 1951).

5 Ala.—*Opinion of the Justices*, 291 Ala. 581, 285 So. 2d 87 (1973).

Ark.—*Proctor v. Daniels*, 2010 Ark. 206, 392 S.W.3d 360 (2010).

Ill.—*Goodman v. Ward*, 397 Ill. App. 3d 875, 337 Ill. Dec. 399, 922 N.E.2d 522 (3d Dist. 2010), judgment aff'd, 241 Ill. 2d 398, 350 Ill. Dec. 300, 948 N.E.2d 580 (2011).

Power to set judicial qualifications not to be derived from other legislative powers relating to judiciary

A state constitutional amendment giving the legislature the authority to establish jurisdiction and venue, and to set out the circuits and number of judges, does not give to the legislature the authority to set judicial qualifications.

Ark.—*Daniels v. Dennis*, 365 Ark. 338, 229 S.W.3d 880 (2006).

6 Ill.—*Goodman v. Ward*, 397 Ill. App. 3d 875, 337 Ill. Dec. 399, 922 N.E.2d 522 (3d Dist. 2010), judgment aff'd, 241 Ill. 2d 398, 350 Ill. Dec. 300, 948 N.E.2d 580 (2011).

Minn.—*State ex rel. Boedigheimer v. Welter*, 208 Minn. 338, 293 N.W. 914 (1940).

7 **Supreme court justices**

Mont.—*Reichert v. State ex rel. McCulloch*, 2012 MT 111, 365 Mont. 92, 278 P.3d 455 (2012).

8 Alaska—*Oxereok v. State*, 611 P.2d 913 (Alaska 1980).

Requirement of payment of filing fee from judicial candidate not unconstitutional

U.S.—*Little v. Florida Dept. of State*, 19 F.3d 4 (11th Cir. 1994).

9 S.C.—*Redfearn v. Board of State Canvassers of S. C.*, 234 S.C. 113, 107 S.E.2d 10 (1959).

Nonconstitutional office

Conn.—*Adams v. Rubinow*, 157 Conn. 150, 251 A.2d 49 (1968).

10 Alaska—*Buckalew v. Holloway*, 604 P.2d 240 (Alaska 1979).

11 N.H.—*In re Proposed Rule Relating to Continuing Ed. for Dist. and Municipal Court Judges*, 115 N.H. 547, 345 A.2d 394 (1975).

Court determination of ineligibility

N.Y.—*Matter of Schamel*, 49 A.D.2d 786, 372 N.Y.S.2d 742 (3d Dep't 1975).

12 Alaska—*In re Cummings*, 292 P.3d 187 (Alaska 2013) (three years).

As to removal proceedings against a judge, see §§ 119 to 140.

13 Ark.—*Proctor v. Daniels*, 2010 Ark. 206, 392 S.W.3d 360 (2010).

- 14 N.H.—In re Proposed Rule Relating to Continuing Ed. for Dist. and Municipal Court Judges, 115 N.H. 547, 345 A.2d 394 (1975).
- 15 Ga.—Pyles v. Henley, 230 Ga. 811, 199 S.E.2d 249 (1973).

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